

DISCIPLINE RULES FOR JUDGES (DRJ)

TABLE OF RULES

Rule

- 1 Scope of Rules; Parties
- 2 Initiating Supreme Court Consideration
- 3 Contesting Recommendation
- 4 Record on Review
- 5 Briefs
- 6 Hearing
- 7 Additional Evidence or Findings--Remand
- 8 Motion
- 9 Decision and Reconsideration
- 10 Effect of Discipline
- 11 Reinstatement of Eligibility To Hold Judicial Office
- 12 Informal Admonishment or Reprimand by Commission
- 13 Substitute Panel
- 14 Supplemental Provisions

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RULE 1

SCOPE OF RULES; PARTIES

(a) Supreme Court Consideration. A decision of the Judicial Qualifications Commission that recommends the discipline or retirement of a judge or justice (hereafter "judge") or that recommends that a judge should or should not be reinstated to eligibility to hold judicial office will be considered by the Supreme Court in the manner provided by these rules.

(b) Judicial Qualifications Commission. The proceedings of the Judicial Qualifications Commission (hereafter "commission") are governed by rules adopted by the commission.

(c) Parties. The only parties to a proceeding under these rules are the commission and the judge who is the subject of the commission recommendation of discipline or retirement.

(d) Discipline. As used in these rules, "discipline" includes admonishment, reprimand, censure, suspension, and removal from office, but does not include admonishment or reprimand agreed to by the judge as provided in rule 12.

Comment

Section (a). The Supreme Court may only consider a Judicial Qualifications Commission recommendation of discipline or retirement. Const. art. 4, subsection 31 (amend. 71). The word "judge" will be used throughout the rules rather than the terms "judge or justice" found in the constitution.

Section (b). The commission determines its own rules for proceedings before it. Const. art. 4, subsection 31 (amend. 71).

Section (c). Only the commission and the judge will be parties to Supreme Court proceedings.

Section (d). Rule 12 authorizes the commission to informally admonish or reprimand a judge without referring the matter to the Supreme Court. The word "discipline" used throughout these rules does not include this informal admonishment or reprimand.

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RULE 2  
INITIATING SUPREME COURT CONSIDERATION

(a) Generally. Decisions of the commission recommending to the Supreme Court that a judge should be disciplined or retired shall be in writing. The commission shall serve on the judge a copy of its decision recommending that the Supreme Court discipline or retire the judge. Unless a matter is disposed of under rule 12, the commission shall file a copy of its decision with the Supreme Court when the commission's decision is final under the rules of the commission. The commission shall serve notice on the judge of the date the decision has been filed with the Supreme Court.

(b) Time for Filing. The written decision of the commission shall specify the time period in which the judge may file a notice of contest under rule 3. The period may not be shorter than 7 days nor longer than 28 days after the date of service on the judge of notice that the decision has been filed with the Supreme Court.

Comment

Section (a). The commission's recommendation to the Supreme Court must be in writing. The rule does not prohibit the commission from giving the judge a proposed recommendation to determine if discipline can be imposed by agreement under rule 12. The rule also accommodates a process for reconsideration by the commission before filing a recommendation with the Supreme Court.

Section (b). This section delegates to the commission the responsibility of determining how much time should be allowed for the filing of a notice of contest. The commission is in the best position to know whether the particular case requires prompt action or may be handled in a manner closely approximating the normal time limits for an appeal to the Supreme Court.

[Effective May 14, 1982]

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RULE 3  
CONTESTING RECOMMENDATION

(a) Generally. A judge who seeks to contest a recommendation of discipline or retirement must file a notice of contest with the Supreme Court and the commission. The notice must be filed within the time period specified in the decision of the commission as provided in rule 2(b).

(b) Form of Notice. The notice of contest must (1) be titled a notice of contest, (2) describe the portions of the recommendation of the commission that the judge wishes to contest, and (3) name the judge seeking to contest the recommendation. The notice must be signed by the judge or by counsel. The name, address, and telephone number of the lawyer for any party represented by counsel should be placed on the notice. The residence address and telephone number of the judge seeking to contest the recommendation should also be included on the notice.

Comment

Section (a). The judge who wishes to contest a commission recommendation must file a notice of contest. The time period for filing a notice of contest is determined by the commission. See rule 2(b).

[Effective May 14, 1982]

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RULE 4  
RECORD ON REVIEW

(a) Transcription of Proceedings. Except as provided in section (b), upon receipt of a timely filed notice of contest, the commission shall at its own expense transcribe those portions of the record of the proceedings involving those charges upon which the recommendation of the commission is based. The transcription of the record and copies of relevant material filed with the commission shall be forwarded by the commission to the judge within the time authorized by the Supreme Court. Any objections relating to the accuracy and content of the record must be made within 14 days after service of the record on the judge. Objections shall be decided in accordance with the rules of the commission. The commission shall forward the record to the Supreme Court after objections are determined by the commission or, in the absence of objection, after the time for objection has expired.

(b) Agreed Record in Contested Proceedings. The commission and the judge may agree to a record in contested proceedings different from that required by section (a). The agreed record shall contain sufficient material to permit the Supreme Court to consider the decision of the commission.

(c) Uncontested Proceedings. If the judge has not timely filed a notice of contest, the record shall consist of the decision of the commission and any other portions of the proceeding which the Supreme Court deems relevant for its consideration.

Comment

Section (a). The rule provides that the commission will prepare the record in a contested proceeding. The commission will only need to transcribe those portions of the proceedings which are relevant to its recommendation. Thus, if the judge was originally charged with five different violations of the Code of Judicial Conduct and the commission recommends discipline based on only one of those, it would only need to transcribe the portions of the proceedings relevant to the charge actually found. The commission will first serve the record on the judge to allow for its determination of any objections to the record before the matter is referred to the Supreme Court. If a party is not satisfied with the commission's determination of the objection, the Supreme Court will decide the matter.

Section (b). There may be circumstances when the commission and the judge disagree only over a limited part of the commission recommendation. In such circumstances, an agreed record is authorized. Cf. RAP 9.4.

Section (c). If a judge does not contest the commission recommendations, the record will only consist of the commission decision, supplemented by those portions of the record the Supreme Court deems relevant.

[Effective May 14, 1982]

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RULE 5  
BRIEFS

(a) Contested Proceedings. If a notice of contest is timely filed, the Supreme Court will establish a schedule for filing briefs.

(b) Uncontested Proceedings. If a notice of contest is not timely

filed, briefs will not be required unless requested by the Supreme Court.

(c) Content of Brief. A brief should contain under appropriate headings and in the order here indicated:

(1) Title Page. A title page, which is the cover.

(2) Tables. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where cited.

(3) Statement of the Case. A fair statement of the facts and procedure relevant to the recommended discipline or retirement, without argument. Reference to the record must be included for each factual statement.

(4) Statement of the Issues. A statement of the issues presented by the commissions recommendation.

(5) Argument. The argument in support of the relief sought by the party filing the brief, together with citations to legal authority and references to relevant parts of the record. The argument may be preceded by a summary.

(6) Conclusion. A short conclusion stating the precise relief sought.

(7) Appendix. An appendix to the brief if deemed appropriate by the party submitting the brief.

(d) Typing and Filing Brief. Rule of Appellate Procedure 10.4(a) is applicable to briefs filed under these rules.

(e) Preparation of Brief. Rules of Appellate Procedure 10.4(b), (c), (e), (f), and (g) are applicable to briefs filed under these rules.

(f) Service of Brief. A party shall serve a copy of the party's brief on all other parties at or before the time the brief is filed with the Supreme Court.

(g) Reproduction of Brief. Rule of Appellate Procedure 10.5(a) is applicable to a brief filed under these rules.

(h) Submission of Improper Brief. Rule of Appellate Procedure 10.7 is applicable to a brief filed under these rules.

(i) Amicus Curiae Brief. Rule of Appellate Procedure 10.6 is applicable to an amicus curiae brief filed under these rules.

#### Comment

Section (a). If a proceeding is contested, the court will set the schedule for filing briefs. This will allow the court flexibility to accelerate those cases which should be speedily resolved, while permitting more time for cases which do not require quick resolution.

Section (b). In an uncontested case, the court will usually decide the case based on the decision of the commission, which should include the factual basis for the commissions recommendation. The court may order a brief from the commission if it concludes additional information is necessary.

Section (c). This section is adapted from RAP 10.3. Section (i). As a general rule persons other than parties will not be aware of a discipline or retirement proceeding, but the court or a party may occasionally find the need for an amicus curiae brief. This section incorporates the relevant appellate rule.

[Effective May 14, 1982]

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#### RULE 6 HEARING

(a) Contested Proceedings. If a notice of contest is timely filed, the Supreme Court will set the date for the hearing with oral argument. Oral argument will be governed by Title 11 of the Rules of Appellate Procedure.

(b) Uncontested Proceedings. If a notice of contest has not been filed, oral argument will not be held unless requested by the Supreme Court. The Supreme Court will nevertheless notify the parties of the date set for the hearing without oral argument.

Comment

Section (a). Normally the court will hear oral argument only in contested proceedings. The court will set the date for oral argument at the same time it sets the briefing schedule. RAP Title 11 governs oral argument.

Section (b). The court is required to hold a hearing in order to impose discipline or to retire a judge. Const. art. 4, subsection 31 (amend. 71). If a proceeding is uncontested, the court will set a date for considering the commission recommendation, but it will not ordinarily schedule time for oral argument.

[Effective May 14, 1982]

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RULE 7  
ADDITIONAL EVIDENCE OR FINDINGS--REMAND

If the Supreme Court on its own motion or on the motion of the commission or the judge determines that further commission proceedings, additional evidence, or additional findings will aid the Supreme Court, the Supreme Court may remand the case to the commission or accept supplementary materials without remand.

Comment

The Supreme Court may conclude, either on its own or at the instance of a party, that additional commission proceedings are desirable. The Supreme Court may decide that the commission should reconsider the recommendation or obtain additional evidence. This rule permits a remand for these purposes. The rule also authorizes the Supreme Court to receive additional evidence. The generally accepted standard of review for Supreme Court proceedings in the area of judicial misconduct or disability is an "independent evaluation of the evidence." Hence, the Supreme Court functions with a broader standard of review than is usual for an appellate court reviewing a trial court decision. This rule allows maximum flexibility for supplementing the record. Cf. ABA Standards 7.4-7.6 which are consistent with this approach.

[Effective May 14, 1982]

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RULE 8  
MOTION

(a) Relief Available. A party may seek relief, other than a decision of the case on the merits, by a motion. Rules of Appellate Procedure 17.3(a) and 17.4 are applicable to the motion filed under these rules.

(b) No Oral Argument. Motions will ordinarily be decided without oral argument.

(c) Motions Decided by Department or Full Court. A motion will be decided by a department of the Supreme Court or by the full Supreme Court.

[Effective May 14, 1982]

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RULE 9  
DECISION AND RECONSIDERATION

(a) Decision by Full Court. Hearings on the merits under these rules will ordinarily be heard by nine justices. A reference to Supreme Court Justice or Justices in these rules includes regular and pro tempore justices. A reference to the Supreme Court includes the Supreme Court as regularly constituted, and the Supreme Court with one or more justices pro tempore.

(b) Postponement of Decision. The Supreme Court may postpone Supreme Court proceedings involving a judge if there are other proceedings pending before the commission involving that same judge.

(c) Decision Imposing Discipline or Retirement. Discipline may be imposed or retirement ordered only upon the affirmative vote of at least five Supreme Court Justices. The decision of the court shall be in the form of a written opinion. The Supreme Court may impose the sanction recommended by the commission, or any other sanction that the Supreme Court deems proper.

(d) Finality of Decision. The decision of the Supreme Court becomes final 14 days after the decision is filed, unless a motion for reconsideration of the decision is earlier filed. If a timely motion for reconsideration is filed, the decision of the Supreme Court becomes final when the motion for reconsideration is denied. If the motion for reconsideration is granted, the reconsidered decision is final when filed. The Supreme Court decision is effective when final, unless otherwise provided by the Supreme Court in its decision.

(e) Motion for Reconsideration. A party seeking reconsideration of a decision must file a motion for reconsideration within 14 days after the decision of the Supreme Court has been filed. Rules of Appellate Procedure 12.4(c) through (h) are applicable to proceedings under these rules.

Comment

Section (a). The Supreme Court will ordinarily decide a judicial discipline case with a full panel of nine justices, drawing from justices pro tempore if necessary, to create a full panel. The rule does provide, however, that a decision by less than nine justices will be effective if the decision is supported by at least five justices.

Section (b). The ABA Standards recommend that the court dispose of all matters regarding the discipline of a particular judge at one time. ABA Standards Relating to Judicial Discipline and Retirement, Std. 7.6.

Section (c). The Supreme Court must approve the discipline of a judge with at least five votes. The court may impose the discipline it determines is proper.

Section (d). A party has 14 days in which to file a motion for reconsideration. If no motion is filed, the decision is final at the end of the 14-day period. If a motion is filed, the decision is final when the motion is denied or when the reconsidered decision is filed. This parallels RAP 12.4 which permits only one motion for reconsideration. This paragraph supersedes RCW 2.04.170 to the extent the statute is in conflict with this rule.

[Effective May 14, 1982]

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RULE 10  
EFFECT OF DISCIPLINE

(a) Removal or Retirement. The office of a judge removed or retired by the Supreme Court becomes vacant when the Supreme Court decision is final. A judge may not perform any judicial duties thereafter. A judge who is

removed or retired by the Supreme Court is no longer eligible for judicial office unless the eligibility of the person removed or retired is reinstated by the Supreme Court.

(b) Suspension. The office of a judge suspended by the Supreme Court does not become vacant, but the judge may not perform any judicial duties during the period of suspension, except to the extent the decision of the Supreme Court provides otherwise.

(c) Effect of Discipline on Salary. A decision imposing discipline other than removal or retirement will state the effect of the discipline upon the salary of the judge. Subject to the limitation in rule 9(c), the Supreme Court may diminish the salary of the judge based only on the prospective future decrease in the judges workload brought about by the discipline imposed by the Supreme Court.

#### Comment

Section (a). The constitution provides that a judicial office becomes vacant if a judge is removed or retired. Const. art. 4, subsection 31 (amend. 71).

Section (b). If a judge is suspended from office, the implication is that the office is not vacant. This section makes this clear. The rule does not allow a judge to perform judicial duties while suspended, except as may be otherwise authorized by the Supreme Court.

Section (c). The constitution requires the Supreme Court to specify the effect on the judges salary of discipline other than removal or retirement. The Supreme Court will not use its power to affect salary as a means of imposing a fine on the judge, which is not specifically authorized by the constitution. Statutes control the collateral effect on retirement benefits of a Supreme Court decision affecting payment of a judge's salary.

[Effective May 14, 1982]

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### RULE 11 REINSTATEMENT OF ELIGIBILITY TO HOLD JUDICIAL OFFICE

(a) Petition Filed With Commission. A former judge who has been removed from office or retired by the Supreme Court may apply to the commission for reinstatement of eligibility to hold judicial office.

(b) Commission Recommendation. The commission shall determine whether the applicant has made an affirmative showing that reinstatement will not be detrimental to the integrity and standing of the judiciary and the administration of justice, or be contrary to the public interest. The commission recommendation on the application shall be in writing.

(c) Supreme Court Procedure. A decision recommending that a former judge should or should not be reinstated to eligibility to hold judicial office shall be processed under these rules in the same manner as a decision of the commission recommending the discipline or retirement of a judge.

#### Comment

Section (a). The constitution gives to the Supreme Court the authority to reinstate the eligibility of a removed or retired judge to hold judicial office. The constitution does not establish standards for reinstatement. This section provides that the commission will initially consider an application for reinstatement.

Section (b). This section is modeled after rule 8.6(a) of the Discipline Rules for Attorneys. The Supreme Court has considered the question of attorney reinstatement several times. The standard set forth in the rule along with the developed case law will provide the commission and the Supreme Court with a basis for determining whether to reinstate a

former judges eligibility.

Section (c). Once a commission recommendation is filed with the Supreme Court, the procedure will be the same as in cases involving the discipline or retirement of a judge.

[Effective May 14, 1982]

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RULE 12  
INFORMAL ADMONISHMENT OR REPRIMAND  
BY COMMISSION

(a) Generally. The commission may informally admonish or reprimand a judge, but only with the agreement of that judge. The agreement shall provide whether the agreement of the judge to the admonishment or reprimand may be considered as an admission of misconduct by the judge. In any event, the conduct causing the admonishment or reprimand may be considered in the event of a future complaint against the same judge. The agreed admonishment or reprimand may include an agreement by the judge to desist from certain prescribed conduct.

(b) Effect of Informal Admonishment or Reprimand. An agreement to informally admonish or reprimand a judge terminates the complaint or complaints which gave rise to the admonishment or reprimand, without the necessity of referring the matter to the Supreme Court.

Comment

Const. art. 4, subsection 31 (amend. 71) gives the Supreme Court the authority to impose discipline on judges. Arguably, the commission may not engage in informal dispositions without authority from the Supreme Court. This rule delegates a small, but important, part of the Supreme Courts discipline power to the commission. The commission is only empowered to informally admonish or reprimand a judge. If more serious discipline is called for, the Supreme Court must impose the discipline. The rule requires the consent of the judge. The judge will, thereby, be waiving any right to have discipline imposed only by the Supreme Court. Cf. ABA Standard 6.6.

[Effective May 14, 1982]

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RULE 13  
SUBSTITUTE PANEL

(a) Generally. If a justice of the Supreme Court is the subject of a recommendation for discipline or retirement, a substitute panel of nine judges shall be selected as provided in this rule to serve as justices pro tempore to consider the commission recommendation.

(b) Selection of Justices Pro Tempore. The presiding chief judge of the Court of Appeals shall be one member of the substitute panel and shall be the chief justice pro tempore unless the judge disqualifies himself or herself or is otherwise disqualified by section (c). The clerk of the Supreme Court shall select the balance of the justices pro tempore by lot from all remaining active Court of Appeals judges. If there are fewer than nine judges of the Court of Appeals who are not disqualified, the panel shall be completed by the clerk by selecting by lot from the active superior court judges until a full panel of nine justices pro tempore has been selected.

(c) Disqualification. A judge may disqualify himself or herself without cause. No judge who has served as a master or a member of the



commission in the particular proceeding or who is otherwise disqualified may serve on the substitute panel. No judge against whom a formal charge is pending before the commission shall serve on the panel.

(d) Chief Justice Pro Tempore. If the presiding chief judge of the Court of Appeals is not a member of the substitute panel, the substitute panel shall select one of its members to serve as chief justice pro tempore.

[Effective May 14, 1982]

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RULE DRJ 14  
SUPPLEMENTAL PROVISIONS

(a) Service and Filing With the Court. Rule of Appellate Procedure 18.5 governs service, proof of service, and filing of papers under these rules.

(b) Computation of Time. Rule of Appellate Procedure 18.6 applies to the computation of time under these rules.

(c) Waiver of Rules and Sanctions for Violation of Rules. Rules of Appellate Procedure 18.8(a) and (d) and 18.9(a) are applicable to proceedings under these rules.

(d) Applicability of RAP. Upon order of the Supreme Court, the Rules of Appellate Procedure may be made applicable to any part of the proceeding involving the discipline or retirement of a judge not governed by these rules.

(e) Confidential and Privileged Communications. Confidential communication between a judicial officer and peer Counselors of the Judicial Assistance Committee of the Superior Court Judges' Association or the district and Municipal Court Judges' Association or the LAP (Lawyers Assistance Program of the Washington State Bar Association) shall be privileged against disclosure without the consent of the judicial officer to the same extent and subject to the same conditions as confidential communication between a client and psychologist.

[Adopted effective May 14, 1982; November 25, 2003.]

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